IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9949 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FIROZ SHABBIRBHAI MANIYAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9949 of 2003

MS KRISHNA U MISHRA for Petitioner No. 1

MS PANCHAL AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 05/11/2003

ORAL JUDGEMENT

By way of filing this Special Civil Application, the petitioner has challenged the order of detention passed by the Police Commissioner, Ahmedabad City, on 23rd June, 2003 in exercise of powers under sub-section (2) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA

Act") declaring the petitioner as a "bootlegger" within the meaning of PASA Act and directing the detention of the petitioner. In pursuance of the said order the petitioner came to be detained in custody on 23rd June, 2003.

2. The grounds served upon the petitioner and as placed on record clearly indicate that the detaining authority took into consideration the fact of registration of crime against the petitioner on 20th June, 2003 under Sections 66(b), 65(a),(e), 81 and 116(1)(b) of the Bombay Prohibition Act, whereby it was alleged that the petitioner was found in possession of foreign liquor worth of Rs.25,800. In addition to this, the detaining authority has also relied upon two in-camera statements as recorded by the by sponsoring authority on 20th June, 2003 and as verified by the detaining authority on 21st June, 2003, revealing incidents occurred on 5th May, 2003 and 13th May, 2003. From the above material, the order, impugned in this petition, came to be passed by the detaining authority.

3. Learned Advocate Mr Girishi Pandya for the petitioner and learned A.G.P. Ms. Panchal for the respondents were heard at length. The affidavit-in-reply as placed on record by the learned AGP Ms. Panchal of the detaining authority is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner and controverted by the AGP, it appears that the matter can be disposed of on the ground that the detaining authority applied its mind properly to the vital aspect of the matter. On going through the grounds it is clear that the petitioner was in judicial custody and the order came to be passed and served upon the petitioner in pursuance of a crime registered against the petitioner as aforesaid. In this respect, the detaining authority came to the conclusion that the petitioner was likely to file an application for bail and was likely to be released by the Court. Upon being so released, according to the detaining authority, the petitioner was likely to continue his illegal activities. Now the question is in view of the indisputable, factual panorama whether there was any material before the detaining authority to come to the conclusion that the petitioner was likely to file an application for bail and was likely to be released on bail. On going through the record and grounds served upon the detenu, it is nowhere found that there was any material before the detaining authority to come to a conclusion that the petitioner was likely to move the bail application and was likely to be released

on bail. The learned advocate for the petitioner submits that the petitioner is in judicial custody so far. In this view of the matter, it is clear that the subjective satisfaction of the detaining authority is vitiated on the ground of non appliation of mind to the vital aspect of the matter. The facts of the case are squarely covered by a decision of the Apex Court in the matter of AMRITLAL V. UNION OF INDIA as reported in AIR 2000 SC 3675. The order impugned therefore is required to be set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 23.06.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

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